

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

HOSSEIN GOAL

Respondent

Case No.: I-02-72508

FINAL ORDER

I. Introduction

On October 24, 2002, the Government served a Notice of Infraction upon Respondent Hossein Goal alleging that he violated 21 DCMR 700.3 by failing to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on October 21, 2002 at 1608 14th Street, N.W., and sought a fine of \$1,000.

Respondent filed a timely answer with a plea of Deny, and I held an evidentiary hearing on January 8, 2002. Donald Goodman, the inspector who issued the Notice of Infraction, appeared on behalf of the Government, and Respondent Hossein Goal appeared on his own behalf. Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Mr. Goal owns a building at 1608 14th Street, N.W. A restaurant is located on the ground floor of the building, with apartments on the upper floor. On October 21, 2002, Mr. Goodman observed an uncovered dumpster at the rear of the property. The dumpster was overflowing with trash, and more trash was on the ground next to it. The dumpster contained plastic bags with food wastes. Rats could easily gain access to the open dumpster by climbing a nearby fence, and could gain access to the food wastes by clawing open the plastic bags.

Mr. Goal leases the ground floor restaurant to a tenant, and has been involved in a dispute with that tenant about rent payments for several months. Because of that dispute, his attorney advised him not to speak with the tenant. As a result, Mr. Goal has no information about why the dumpster was overflowing on October 21. Based upon his experience in the restaurant industry, however, he speculated that neighbors may have disposed of their trash in the restaurant's dumpster.

There is no evidence in the record that Mr. Goal has a history of violations.

III. Conclusions of Law

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

The storage of wastes in the dumpster at Respondent's building violated this regulation because rats easily could obtain access to the food items in the plastic bags. Section 700.3

imposes strict liability upon an owner of property where a violation occurs, regardless of the source of the offending waste. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995). *See DOH v. Young*, OAH No. I-00-20332 at 3-4 (Final Order, March 12, 2002) (“The purpose of § 700.3 and the increased fines enacted by the Rodent Control Act of 2000 is to give property owners a greater motivation to take all necessary steps to control conditions that can lead to an increase in the rat population.”) Therefore, even if Mr. Goal’s speculation that neighbors disposed of trash in the dumpster were supported by the evidence, that would not be a defense to the charge.

Mr. Goal argued that the Government should have issued a Notice of Infraction to the tenant and should have pursued him only if the tenant failed to pay the applicable fine. Because a property owner is strictly liable under § 700.3, however, the Government is not required to pursue a tenant before issuing a Notice of Infraction to the owner. *See DOH v. Calomiris*, OAH No. I-02-72102 at 3-4 (Final Order, November 26, 2002).¹

The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.² 16 DCMR 3201. Because Mr. Goal has no record of previous regulatory violations, I will reduce the fine to \$875.

¹ As noted in *Young, supra* at 3 n.2, this does not mean that property owners are the only possible violators of § 700.3. The Government also may pursue a tenant who disposes of trash unlawfully, but it is not required to do so.

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondent shall pay a total of **EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$875)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/f/ 01/15/03

John P. Dean
Administrative Judge